IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Interim Order Vacation Application No. 4584 of 2005
In
Writ Petition No. 661 (S/S) of 2005

1. Smt. Anita, wife of Sri Rally Singh, resident of Isai Nagar No. 1, Post Office – Lamachaur, Tehsil – Haldwani, District – Nainital.

2. Smt. Anita Gowan, daughter of Sri Arthur Gowan, Gowan Bulding, Kathogadam, District – Nainital.

…….Petitioners.

V e r s u s.

1. State of Uttaranchal through Secretary to Government Medical Health and Family Welfare Department, Uttaranchal Shashan, Dehradun.
2. Director General, Medical Health and Family Welfare Department, Uttaranchal Shashan, Dehradun.

……..Respondents.

Hon'ble M.M. Ghildiyal, J.:

Heard Sri V.K. Bisht, Sr. Advocate, assisted by Sri A. Chatterjee, learned counsel for the petitioners and learned Standing Counsel, who has accepted notice on behalf of respondents.

Learned counsel for the both the parties are agreed to decided the writ petition at its admission stage itself.

By means of this petition, the petitioners have challenged the advertisement-dated 21.04.2005 issued in daily newspaper Amar Ujala for appointment of Staff Nurse/Midwives.

The petitioners have challenged the condition regarding the maximum age limit for appointment of Midwives / Staff Nurses in the Medical, Health and Family Welfare Department as advertised vide advertisement dated 21.04.2005 in daily newspaper Amar Ujala.

The submission of the learned counsel for the petitioner is that petitioners are already working with the Department in remote hill area of the State as Staff Nurse on contract basis and as such, they should be provided relaxation in the age for appointment to the post of Midwife / Staff Nurse.

Learned Standing Counsel has filed counter affidavit in which he has annexed the copy of the judgment and order dated 17.07.2004 passed by this court in Writ Petition no. 797 (SS) of 2004. This Writ petition was filed by the petitioner no. 1 for the relief of age relaxation in pursuance to the advertisement dated 31.03.2003 for appointment of Staff Nurse This court on 17.07.2004 has held that the Rules cannot be relaxed for a particular person. Though this court has sympathy for the petitioner. Under the existing Rules no relief can be granted to the petitioner regarding relaxation in upper age limit.

Again by means of this writ petition the petitioners are seeking same relief, which has already been rejected by this court, vide judgment and order dated 17.07.2004 under the same set of circumstances. Consequently, the petitioners cannot be granted the relief in the present writ petition, which has already been rejected by this court.

The submission of the petitioners is that they have filed the present writ petition in view of the order dated 25.02.2004 passed by this court in the case of Dr. Sangeeta Kathait, who is seeking appointment for the post of Medical Officer and is working with the Department of Medical and Health in the State of Uttaranchal on contract basis and this court on 25.02.2004 has passed an order to this effect, which is quoted as under:

"In the meantime, it is provided that the Government may consider granting age relaxation to the petitioner, who is serving the Government on consolidated salary with effect from 07.05.2002 and considering the relaxation the application form of the petitioner shall be accepted by the Commission and the same shall be kept and shall be processed after the grant of the relaxation by the Government".

The present advertisement has been issued strictly as per existing Rules as on today and it is the Government, who can relax the upper age limit of Staff Nurses, who are already working with the Department on the contract basis. Petitioners have submitted that they have already made representations dated 02.05.2005 and 03.05.2005 to the respondent no. 2, which are annexed as Annexure Nos. 18 and 19 to the writ petition.

In the present writ petition, this court on 24.05.2005 has passed an order that in the meantime, the application of the petitioners shall be received and kept separate.

In any case, it is a matter which is to be decided by the Government and the Government may consider the representations dated 02.05.2005 and 03.05.2005 of the

petitioners and may pass suitable order in this regard. In case, the Government relax the upper age limit as prescribed in the advertisement dated 21.04.2005 for the appointment of Staff Nurse / Midwives and only thereafter, the candidatures of the petitioners shall be considered in pursuance to the advertisement dated 21.04.2005 issued by the Department for appointment of Staff Nurses/ Midwives in accordance with law.

With this direction, the writ petition is finally disposed of. No order as to costs.

(M.M. Ghildiyal, J.)

July 25, 2005
SKSharma